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OFFICE OF PETITIONS

In re Application of :
Huyser et al. : DECISION ON APPLICATION
Application No. 10/043,842 : FOR
Filed: January 10, 2002 : PATENT TERM ADJUSTMENT
Attorney Docket No. 60,210-053:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT (37 CFR § 1.705)," filed June 10, 2004. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred thirty-five (135) days to two hundred thirty-nine (239) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred thirty-eight (238) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 10, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 135 days. On November 24, 2004, applicant

timely¹ submitted an application for patent term adjustment (with required fee). Applicant disputes the period of adjustment for Office failure to mail a first action under 35 U.S.C. 132. Applicant maintains that in accordance with 37 C.F.R. 1.703, the period of adjustment for Office delay in mailing the first Office action under 35 U.S.C. 132 should be 242 days based on the mailing of an Office action on November 6, 2003. Applicant contends that the Office delay should not be calculated based on the mailing of an Office action on September 16, 2003.

The record supports a conclusion that the patent issuing from the application is not subject to a terminal disclaimer.

Applicant's evidence and arguments have been considered. It is concluded that under the circumstances of this case, the date of mailing of the Office action mailed November 6, 2003 should be used in calculating Office delay pursuant to § 1.703(a)(1). However, the number of days in the period of adjustment pursuant to § 1.703(a)(1) for the Office's mailing of a first action under 35 U.S.C. 132 on November 6, 2003, is 241 days, counting the number of days beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a), March 11, 2003, and ending on the date of the mailing of the first action under 35 U.S.C. 132, November 6, 2003.

Moreover, it is concluded that applicant's delay should be calculated based on the time in excess of three months that it took applicant to respond to the Office action mailed November 6, 2003. Thus, as stated by applicant, the period of delay pursuant to § 1.704(b) is 3 days, not 55 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is two hundred thirty-eight (238) days (241 - 3).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

¹ PALM records indicate that the Issue Fee payment was received on June 11, 2004.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Attachment: Copy of Revised PAIR Screen